

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.**  
*See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24*

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**JUN -9 2010**  
COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

CHRISTELLE-PRISCA MALONGA	)	2 CA-CV 2010-0002
BINIAKOUNOU,	)	DEPARTMENT A
	)	
Petitioner/Appellee,	)	<u>MEMORANDUM DECISION</u>
	)	Not for Publication
v.	)	Rule 28, Rules of Civil
	)	Appellate Procedure
FIDELE BIRAHAGAZE	)	
BATEKREZE,	)	
	)	
Respondent/Appellant.	)	
	)	

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APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. D-20074633

Honorable Michael J. Cruikshank, Judge

AFFIRMED

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Fidele Birahagaze Batekreze	Tucson
	In Propria Persona

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ESPINOSA, Presiding Judge.

¶1 In this appeal, Fidele Batekreze challenges the trial court's post-dissolution order awarding real property to his former wife, Christelle-Prisca Biniakounou. Because he has failed to raise any reversible errors on appeal, we affirm.

## **Factual Background and Procedural History**

¶2 “In reviewing the apportionment of community property, we consider the evidence in a light most favorable to upholding the trial court’s ruling and will sustain that ruling if the evidence reasonably supports it.” *Kohler v. Kohler*, 211 Ariz. 106, ¶ 2, 118 P.3d 621, 622 (App. 2005). The parties purchased a home during their marriage, and, at some point, began operating it as a rental property. In February 2008, while Batekreze was incarcerated, Biniakounou resumed living in the home. However, in their May 2008 divorce decree, the property was characterized as a rental property and the parties were each awarded half of its assets and liabilities. About a year later, Biniakounou filed a motion requesting that the court award the house to her as her separate property. At the ensuing hearing, the trial court ordered the parties to have the property appraised and set the matter for a status conference.

¶3 Biniakounou thereafter had the property appraised and filed the appraisal with the court before the status conference. The appraisal determined that the property was worth \$104,000. At the status conference, Biniakounou also provided a mortgage statement that showed \$104,853.07 still owed and asked the court to award the house solely to her. Batekreze stated his preference was to rent the property or else make the payments until the housing market improved. He also expressed his belief that the house would sell for more than the appraised value. Biniakounou testified that during the time the house had been used as rental property, the rental payments had been insufficient to cover the entire mortgage payment.

¶4 The trial court determined that the value of the property was \$104,000, the amount owed on it was \$104,853.07, and that the parties had no equity in it. As an addendum to the dissolution decree, the court awarded the house to Biniakounou as her sole and separate property and ordered her to obtain new financing in her name. Batekreze timely appealed. This court has jurisdiction pursuant to A.R.S. § 12-120.21(A)(1) and 12-2101(E).

### Discussion

¶5 Batekreze contends that in determining there was no equity in the house for him and Biniakounou to share and awarding it to Biniakounou, the trial court improperly relied on a single appraisal that undervalued the property. We review a trial court's apportionment of community property in a marital dissolution for an abuse of discretion. *Barnett v. Jedynek*, 219 Ariz. 550, ¶ 10, 200 P.3d 1047, 1050 (App. 2009). To the extent Batekreze challenges the court's implicit and explicit factual findings, we will not disturb such findings unless they are clearly erroneous.<sup>1</sup> See *City of Tucson v. Clear Channel Outdoor, Inc.*, 218 Ariz. 172, ¶ 65, 181 P.3d 219, 237 (App. 2008).

¶6 Batekreze argues the trial court's decision was erroneous because it was based on an appraisal that did "not contain fair information or facts supporting" the determined value. Batekreze asserts there was no evidence that the appraiser had "used the best comparisons to other homes in the neighborhood." In support of this claim,

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<sup>1</sup>Biniakounou did not file an answering brief. Although we may treat this as a confession of error, in our discretion, we decline to do so here. See *Nydam v. Crawford*, 181 Ariz. 101, 101, 887 P.2d 631, 631 (App. 1994).

Batekreze relies on property tax information he obtained from the county assessor's office and on information concerning other homes for sale in the area. However, because these documents were not part of the record before the trial court, we cannot consider them on appeal.<sup>2</sup> See *GM Dev. Corp. v. Cmty. Am. Mortgage Corp.*, 165 Ariz. 1, 4, 795 P.2d 827, 830 (App. 1990) (appellate court's review limited to record before trial court). Accordingly, Batekreze has failed to demonstrate that the court's reliance on the appraisal was clearly erroneous. See *City of Tucson*, 218 Ariz. 172, ¶ 65, 181 P.3d at 237.

¶7 Batekreze also argues that the order is invalid because he was not given a copy of the appraisal before the hearing. But because he did not object on this basis before the trial court, this argument is waived. See *Nat'l Broker Assocs., Inc. v. Marlyn Nutraceuticals, Inc.*, 211 Ariz. 210, ¶ 30, 119 P.3d 477, 483 (App. 2005) ("We will not address issues raised for the first time on appeal."). Moreover, because the court ordered Biniakounou to file the appraisal with the court five days before the hearing, Batekreze could have obtained a copy from the court prior to the hearing, but failed to do so.<sup>3</sup> Accordingly, Batekreze has failed to raise any reversible error on this issue as well.

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<sup>2</sup>Batekreze filed a motion seeking to expand the record on appeal to include these documents, which this court denied because the documents had not been available to the trial court. In spite of our ruling, Batekreze's opening brief attaches and relies upon these documents.

<sup>3</sup>Batekreze complains that the trial court failed to send him a copy of the appraisal after Biniakounou filed it, but does not cite to any rule or other authority that would require it to do so, nor are we aware of any.

**Disposition**

¶8 For the reasons stated above, the trial court's order is affirmed.

/s/ Philip G. Espinosa  
PHILIP G. ESPINOSA, Presiding Judge

CONCURRING:

/s/ Joseph W. Howard  
JOSEPH W. HOWARD, Chief Judge

/s/ Virginia C. Kelly  
VIRGINIA C. KELLY, Judge